1951

File No. O-Laq./51

Legal Dept.

A **BRANCH**

Subject:—

Opinions under the Land Acquisition Act, 1894

R.36.E

File No. O.Laq./51

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C O N T E N T S

Legal Department File No. O.Laq. /51.

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EKN.26/6/

No.230

Office of the
Remembrancer of Legal Affairs,
Bombay Castle(Bombay No.1), 4th January 1951.

To

The Collector of Bombay,
Bombay.

Subject:- Payment of compensation for lands acquired for purposes connected with the Defence of British India (i.e. for the Aerodrome at Santa Cruz) - in Case No. LAC/51/K/404 of Kole-Kalyan.

Sir,

With reference to your endorsement No. LAC/51/K/404/1830A, dated 8-12-1950, forwarding letter of even number and date from the Special Land Acquisition Officer, Bombay City and the Bombay Suburban District, on the above subject, I have the honour to observe as follows :

The only ground why the Special Land Acquisition Officer appears to be hesitating to make the payment of the amount to Janabai, the sole surviving executor, appears to be that the fact of the death of the other executor was not brought to his notice before he made his award. However that fact does not appear to affect the position. Under sub-section (1) of section 31 of the Land Acquisition Act, 1894, it is the duty of the Land Acquisition Officer on the making of an award under section 11, to tender payment of the compensation awarded by him to the persons interested, entitled according to the award, and to pay it to them unless prevented by some one or more of the contingencies mentioned in sub-section (2). The only relevant circumstance specified in that sub-section under which the L.A. Officer has to deposit the amount in the Court (instead of making payment thereof) is if there be no person competent to alienate the land. From para. 16 of the last will of Jamaheed Alibhoy it would be observed that he has authorised the executors to sell or otherwise dispose of his properties or any part thereof. Under section 312 of the Indian Succession Act, 1925, upon the death of one or more of several executors or administrators, in the absence of any

P.T.O.

direction to the contrary in the will, all the powers of the office become vested in the survivors or surviver. The power to dispose of the testater's property in this case has, therefore, devolved on the surviving executer, Bai Jainabai. Moreover, this being a case of the disposition of his property by a Mohamedan, no probate is necessary (vide section 213 of the Succession Act). The L.A. Officer has already accepted the will. If, therefore, he is satisfied about the fact of the death of the other executer, Nawjibhai Noor Mahomed, there would be no objection to paying the amount to Bai Jainabai.

2. It is true that in Secretary of State v. Jay Narain (40 C.W.N. 990) the deposit of the compensation amount in Court under an error of ₹ judgment was not held to entitle the claimant to claim interest under section 34 of the Land Acquisition Act. But in the present case, the facts appear to be clear and there would be no ground for depositing the money in Court under section 31(2).

Yours faithfully,

Sd/- P.N.Lad,
4/1.

Remembrancer of Legal Affairs.

4-Cs./N.V.V./13.

Completion of proceedings by P.O.Chikodi after transfer of the area to another district.

Land Acquisition Act, 1894.

Sections 7,11, 12(1).

When the Lands at Rajapur were notified under sections 4 and 6 of the Land Acquisition Act, 1894, they were in the taluka of Chikodi and the P.O. Chikodi was appointed to perform the functions of the Collector for all proceedings under section 7. Thereafter, the territorial changes were made and the village was transferred to the Shirole Taluka of Kolhapur district. The acquisition proceedings are stated to be in the stage of passing the award. The question raised for R.L.A.'s consideration is whether the lands should be notified again under sections 4 and 6 directing the P.O. , N.D. Kolhapur to perform the functions of a Collector cancelling the old notification, or an addendum to the notification under section 6 appointing P.O., N.D. Kolhapur to perform the functions of the Collector should be issued or whether the P.O. Chikodi can still declare the award even now.

2. Under section 7 of the Land Acquisition Act, the State Government or some officer authorised by the State Government in this behalf shall direct the Collector to take order for the acquisition of the land. "Collector" as defined in section 3 clause (c) means the Collector of a District and includes a Deputy Commissioner or any officer specially appointed by the State Government to perform the functions of a Collector under this Act. The Chikodi P.O. who was appointed under section 7 to take order for the acquisition of the land, would be deemed to b an officer, specially appointed to perform the functions of a Collector under this Act. It follows, therefore, that the officer who has been specially appointed to perform the functions of a Collector of a District need not necessarily have revenue jurisdiction over the area. In Ezra vs. Secretary of State (30 Calcutta 36) the question about the jurisdiction of the Land Acquisition Collector arose. In that case it appears that one

...Chatterji was appointed, with powers of the Land Acquisition Collector in respect of land and he held his inquiry in the 24 Parganas in respect of a land to be acquired in Calcutta for which acquisition he was appointed as Collector. He was an officer posted to the Sadar Division of the 24 Parganas viz. Alipore. His office was held there but his jurisdiction under the Land Acquisition Act extended over several districts including Calcutta. It was held that there was no legal objection to his holding the enquiry at Alipore in respect of the land to be acquired in Calcutta. This case lays down the principle that when once an officer has been appointed to perform the functions of Collector under the Land Acquisition Act, he will have the necessary authority to proceed with the land acquisition although he has no revenue jurisdiction over that area. Consequently, although the village of Rajapur has been transferred from Chikodi Taluka, Belgaum District, to Shirole Taluka, Kolhapur District, still the Prant Officer, Chikodi, who was appointed to exercise the powers of the Collector under section 7 could continue to exercise those powers notwithstanding the territorial changes and he would not be divested of that power. The Prant Officer, Chikodi Dn. should, therefore, proceed with the Land Acquisition proceedings and make an award but that award will have to be filed in the Kolhapur Collector's Officer under section 12(1).

Sd/- P.M.Lad,
11/1.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 723, dated the 12th January 1951.

4-Cs.
M.V.V.
13/8.

Legal Department.

Land Acquisition Act, 1894, Section 40(1)(b).

Section 40(1)(b) of the Land Acquisition Act, 1894, contemplates the acquisition of land needed for the construction of some work which is likely to prove useful to the public. In this case the lands proposed to be acquired by the Ugar Sugar Works Co. have been notified as being required by the Ugar Sugar Works Co for the establishment of a pumping station at Ugar Khurd. The object of the Company in establishing a pumping station is to enable it to water the sugar cane plantations extending over an area of 500 to 600 acres, the crop on which would be utilised in the manufacture of sugar. It cannot, therefore, be said that the work notified will not prove useful to the public. Moreover as pointed out by the R.L.A. in his opinion No. 1009, dated 27th January 1949 and in the various opinions referred to therein Government is the final arbiter to decide whether a work is "likely to prove useful to the public." This is not a question of law, but one of fact which must be decided according to the circumstances of each case. If, therefore, Government is satisfied that the establishment of the pumping station by the Sugar Works Company will prove useful to the public, there would be no objection to proceeding with the acquisition. The view expressed by the Special Land Acquisition Officer and the Collector, Belgaum, is not correct. The other argument advanced by the Special Land Acquisition Officer that the Company also proposes to lay hume pipe channels in the lands proposed to be acquired and that as this part of the purpose not having been notified under section 4, it would not be right to proceed with the acquisition does not appear to alter the position.

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For it may be that without the laying out of the hume pipe channels the pumping station would be of no use and water cannot be taken to the plantations.

Sd/- J.R.Dhurandhar,
5/2.

Additional Secretary to Government.

U.R. to R.D. No. 2261, dated 6th February 1951.

4-Cs.
M.V.V.
13/8.

Legal Department.

Returning land to owner - Land Acquisition Act, 1894 -

Where it has been decided to dispose of any acquired land which for any reason has not been used, the occupancy shall, in the absence of special reasons to the contrary be offered in the first instance to the person or persons from whom it was originally acquired or such of them as may have been chiefly interested therein, or to their representative in interest, for sum not less than the awarded compensation or on such other terms as Commissioner may consider reasonable (see para. 328(1) of the Land Acquisition Manual by Andersen). This means that the land may be granted to the owner as if it were a Government land. The provisions of the Land Revenue Code will, therefore, apply and the forms contained in the Land Revenue Rules may be used. It is open to Government to grant the land either on the lease- hold tenure or ordinary rayatwari tenure and it would depend on the agreement between Government and the original owner. However, in such circumstances it would be fair to regrant the land on the same tenure as before the acquisition. The view taken by R.D. is ~~xx~~ correct.

Sd/- B.D.Mirchandani,
Additional Secretary to Government.

4-Cs.
B.V.V.
13/8.

L.R.L.R.D No. 5814 Dated the 3rd April 1951

Legal Department.

Land Acquisition Act, 1894.

In the compromise decree in Dharwar C.S.No.92 of 1943, the United Basel Mission Church, the plaintiff in the suit conceded the right of Government to resume the suit lands which included 9 acres now required by the State Transport Corporation. One of the terms of the decree was that the portion of 9 acres in question to be resumed by Government was to be earmarked for a housing society to be formed within two years. The land was to be given to the society and not to the mission whether on a concession rate or not, was to be considered after the society was formed. It is true that after resumption the land vests in Government. But since it would be necessary to respect the terms of the compromise agreed to by Government, it would be necessary to transfer the land first to the Housing society as already proposed by Government and then to take steps to acquire the same for the State Transport Corporation. There would be no objection to acquisition of the land as the acquisition for the Corporation would be a public purpose within the meaning of the Land Acquisition Act, 1894. (see sec. 38(2) of the Bombay State Road Transport Act, 1950). Though grant of the land first to the Housing Society and then immediately notifying its acquisition for the purposes of the State Transport would be legal, this course in the circumstances of the case, seems rather inexpedient, as it will virtually amount to nullifying one of the terms of the compromise decree. Also such a step will be made a grievance of by the Housing Society and possibly challenged by it in a Court of law. It is, therefore, suggested that after the land is formally notified for acquisition, the Housing society might be offered some other suitable land for their housing scheme.

Sd/- B.D.M.
Additional Secretary to Government.

U.R. to R.D. No. 7098, dated the 4th May 1951.

4-Cs./M.V.V./13.8

LEGAL DEPARTMENT.

Transfer of acquired land.

Land Acquisition Act, 1894.

Additional Secretary's Opinions Nos. 8330, dated 30-8-1948, 9947, dated 23-10-1948, and 9936, dated 23-10-1948.

The opinion of the Additional Secretary (No.8330,dated 30-8-1948) cited by R.D. is distinguishable. Acquisition proceedings in that case were not completed and there was, therefore, scope for withdrawing from acquisition under section 48 of the Land Acquisition Act. In the present case possession of the lands has been already taken and therefore there is no scope for withdrawal from acquisition. Secondly, the area required by the Municipality forms only a part of the land acquired by Government for their milk plan and as the same is not required by the Milk Commissioner, there does not appear any objection to transfer it to the Municipality(cf.Additional Secretary's opinions Nos. 9947, dated the 23rd October 1948 and 9936 dated 23-10-1948).

Sd/- B.D.Mirchandani,

Additional Secretary to Government.

U.R. to R.D. No. 11003, dated the 12th July 1951.

4-Cs.
M.V.V.
13/8.

Office of the R.L.A.

Lands under huts

Application of urgency clause to - Land Acquisition Act, 1894, sec.17.

In his letter No, L.A.Q. dated the 16th December 1950, the Collector of Surat observes:-

"There is no specific provision in the Land Acquisition Manual warranting application of urgency clause to land which is not waste or arable. Section 17 read with paras. 117, 223 of the Land Acquisition Manual (4th Edition), however, convey that possession of land other than waste and arable land cannot be taken under section 17 of the Act by applying urgency clause. This being the position in law it appears that land covered by huts which is not waste or arable cannot be notified by applying the urgency clause."

As, however, the matter is not free from doubt the Collector has solicited orders of Government and R.D. has in referred the papers to R.L.A. for advice.

2. The point raised by the Collector of Surat is covered by R.L.A's opinion No. 4329, dated the 5th May 1948 and it has been held therein that land under the huts cannot be considered arable land. It is also obvious that the land covered by residential huts cannot be regarded as waste land. Consequently, urgency clause cannot be applied to land covered by huts. The view taken by the Collector of Surat is correct.

Sd/- J.R.Dhurandhar,
14/7.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 11269, dated the 16th July 1951.

4-Cs.
N.V.V.
13/8.

No. 15375 dt./24-7-51.

Submitted w.r. to R.D. note at pp.7-8 ante. The R.L.A. is requested to advise on the points raised at 'A' & 'B' therein.

2. The Special Land Acquisition Officer, Bombay City and Bombay Suburban District, reports that in some Land Acquisition proceedings certain Govt. Officers e.g. the Court Receiver, the Administrator General, the Custodian of Evacuee Property etc. are treated as persons interested within the meaning of Sec.3(b) of the Land Acquisition Act, 1894. The first point raised by the R.D. for consideration is whether when the award has been declared under Sec. 11 and notice issued under sub-section (2) of sec. 12 of the Act it is necy. that the Officers concerned shd. appear in person to receive the amount of the compensation or whether such amount can be paid to their representatives on their producing a letter of authority and the personal attendance of the Officers dispensed with. As stated by the Spl. Land Acquisition Officer, para 2 of the form of notice under sec.12(2) (copy at p.3 ante) itself requires the person interested to appear before the L.A. Officer personally or by a duly authorised agent. In the case of Officers of Govt. such as the Custodian of Evacuee Property etc. a letter authorising the bearer thereof to receive the amount due on his behalf would appear to be sufficient legal authority for the L.A.Officer to make the payment, as contemplated by para 260(6) of the Land Acquisition Manual. If the officers concerned themselves are recognized as "persons interested" there would, therefore, be no objection to dispensing with their personal attendance and making payment on the strength of letters of authority signed by them.

3. The next question raised for consideration is whether the receipts signed by such representatives should or should not be stamped. Under proviso (1) to sec. 3 of the Stamp Act, 1899, no stamp duty is chargeable in respect of any instrument executed by, or on behalf of, the Govt. in cases where, but for the exemption, the Govt. would be liable to pay the duty chargeable in respect of such instrument. Payments made under the Land Acquisition Act to the Court Receiver, the Administrator General .....

er the Custodian of Evacuee Property in their capacity as such cannot be considered to be payment made to Govt. The receipts signed by the Officers would not, therefore, be exempt from stamp duty. The presumption made by the Spl. Land Acquisition Officer in this respect is not correct.

Sd/- D.W.D.
26/7/51.

4-Ca./M.V.V./13.8

Legal Department.

The view expressed at 'A' and 'B' in the Revenue Department note dated 21-7-1951 is correct.

Sd/- B.D.M.

Additional Secretary to Government.

U.R. to R.D. No. 12082, dated the 28th July 1951.

4-Cs.
M.V.V.
13/8.

Legal Department.

Acquisition of Lands of Dharamnagar Co-operative Housing Society Ltd.

Land Acquisition Act, 1894.

There is no provision in the Land Acquisition Act for payment of compensation in advance. If such payment is made before the interests of the various claimants i.e. persons interested in the land are ascertained, there may be difficulty in recovering the amount, in case it is later on found that the Society is not entitled to the entire compensation. It is, therefore, desirable to keep the land acquisition proceedings distinct from the loan transactions.

2. If it is proposed to make any advance payment to the Society, it should be on the basis of a fresh mortgage of new buildings proposed to be constructed by the Society and sanctioned by the Development Department who should also take steps to put in a claim before the Land Acquisition Officer for payment of all money due under the existing mortgage. Such a claim can be made under the Land Acquisition Act even if the due date has not arrived. (See also section 73(2) of the Transfer of Property Act).

3. If it is proposed to delay the handing over of the possession for one and a half year, it might be advisable to amend clause (2) of the Agreement, dated 28th June 1951, entered into by Government with the Ahmedabad Electricity Company by adding after the words "may be" in line 4 the following words:

"but not earlier than day of 19 "

Since the Agreement has been executed recently and not yet been published in the Gazette, the amendment may be carried out under the initial of the persons executing the Agreement, if there are no other administrative difficulties. Otherwise a supplemental Agreement would be necessary.

Sd/- B.D.M.

Additional Secretary to Government.

U.R. to H.D. No. 11893, dated the 26th July 1951.

4-Cs./M.V.V./13.8

LEGAL DEPARTMENT.

The Collector of Panch Mahals requests to be informed whether ——

(1) any clause as is required under R.D. Circular No.5012/49, dated 8th March 1950 requires to be implemented in the draft agreement; and

(2) in pursuance of Administrative Order No. XXIV-A below rule 47 of the Bombay Land Revenue Rules, it is essential to select the site before submitting draft notification under section 6 of the Act.

None of these two points involves any question of law or interpretation of any of the provisions of the Land Acquisition Act. It is for the R.D. to consider whether from the administrative point of view any further condition should be inserted in the draft agreement.

It is apparent that the site should be selected by the Collector before the acquisition proceedings are initiated and preliminary notification under section 4 is submitted to Government. Since in the present case the Notification under section 4 of the Land Acquisition Act has already been issued, the question does not survive.

Sd/- B.D.M.

Additional Secretary to Government.

U.R. to R.D. No. 12306, dated the 1st August 1951.

4-Cs.
M.V.V.
14/8.

Office of the R.L.A.

Acquisition of Samadhi.

Land Acquisition Act, 1894.

The view taken by the Collector of Sholapur is correct. As the Samadhi is not a protected monument under the Ancient Monuments Preservation Act, 1904, the same cannot be acquired under the Land Acquisition Act, 1894 (Cf. R.L.A.'s opinion No. 17219, dated 5-12-1950).

Sd/- J.R.Dhurandhar,
25.7

Remembrancer of Legal Affairs.

U.R. to R.D. No. 11983, dated the 27th July 1951.

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M.V.V.
14/8.

Office of the R.L.A.

Transfer of acquired land

Land Acquisition Act, 1894.

Addl. Secy's Opinion No.11003 dt. 12-7-1951.

The two points Raised by the Revenue Department are that the award in this case is not yet declared and the acquisition proceedings cannot, therefore, be said to have been completed. The second point is that as the land is required for a difference purpose by the Municipality there is a change of use which according to the Revenue Department is not in consonance with the law. The R. L. A. is, therefore, requested to advise.

2. It is true that no award has been declared in respect of these lands but the urgency clause has been applied and possession of the lands has been taken on the 5th April 1950 (vide p. 9 ante). If so, the land now vests absolutely in Government free from all encumbrances (section 17). It would, therefore, be open to Government to use the land for any purpose like an ordinary proprietor of the land. In Secretary of State vs. Amolya Charan Banerjee, A.I.R. 1927 Cal. 874, it was urged on behalf of the claimants that the Government having acquired land for a particular purpose are not entitled to use any portion for some other purpose. It was held that "the law seems to be that after acquisition the new owners have the ordinary rights of proprietors and may use their lands as they think fit for any purpose which does not infringe the rights of others and is not inconsistent with the purposes sanctioned by the Statute under which the lands have been taken." A similar view has been taken in LuchmeSwar Singh v. Chairman, Darbhanga Municipality, I.L.R. 13 Cal. 99, where it has been held that a municipality is justified in using the land for any purpose for which the statute authorised it to use land although not for which it was professedly taken. The land in this case was acquired for a public ghat, but the municipality made a ghat upon part of the land and used the rest for a market. The present case would be similar to the case reported in 18

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Cal. 99 and the purpose for which the municipality wants the land is also a public purpose there does not appear any reason to reconsider the view taken in the Additional Secretary's opinion No.11003, dated the 12th July 1951.

Sd/- J.R.Dhurandhar,
3/8

Remembrancer of Legal Affairs.

U.R. TO R.D. No. 12499, dated the 4th August 1951.

4-Cs.

M.V.V.
14/8.

Office of the R.L.A.

Acquisition of Lands in Idar State.

From the facts disclosed in the Revenue Department note it appears that the validity of the acquisition proceedings cannot now be considered. There was no enactment in the State for acquisition of land. But if the acquisition was made by the order of the State these acquisition proceedings cannot now be challenged particularly when they were completed and possession of the lands was handed over to Shri Gandhi long before the State was merged. Shri Gandhi is now admittedly in possession of the land and he cannot be dispossessed by an executive order; nor can he be made to pay the value for the land sold to him at a higher rate. The applicant can, however, be paid a reasonable compensation by this Government if it is considered that what was awarded to him by the Idar State was inadequate.

Sd/- J.R. Dhurandhar,
10/8.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 12953, dated the 11th August 1951.

4-Cs.
M.V.V.
14/8.

Legal Department.

It appears that Bhor Industries Ltd., Bhor, have applied to the Collector of Poona, for acquisition of land for construction of staff quarters and for extension of the factory. The questions raised for the R.L.A's consideration are :-

(1) Whether land can be acquired for staff quarters; and

(2) Whether the consent of Government is necessary to ..issue a notification under section 4(1) of the Land Acquisition Act, 1894.

Under section 40(1) of the Land Acquisition Act, 1894, d can be acquired for the erection of dwelling houses for workman employed by the Company. The word "workmen" has not been defined in the Act and consequently it will have to be given its ordinary meaning. As defined in the Oxford English Dictionary, a workmen means " a man engaged to do work or usually manual labour especially one employed upon some particular piece of work: an operative; often contextually a skilled worker." It appears, therefore, that the word "workmen" has a wide meaning and may include even clerks and other staff. Consequently, there appears no legal objection to acquiring land for the construction of staff quarters of the Bhor Industries, Ltd., under the Land Acquisition Act, provided the other conditions prescribed by the Act are satisfied.

Section 39 of the Land Acquisition Act provides that the provisions of sections 6 to 37 shall not be put in force in order to acquire land for any company unless with the previous consent of the appropriate Government, nor unless the Company has executed an agreement referred to in section 41. Section 40(1) provides that such consent shall not be given unless Government is satisfied either on the report of the Collector under section 5A(2) or by an inquiry held as provided in section 40(2). Consequently, Government will have either to get an independent inquiry made by an officer as provided under section 40(2) or have before them the Collector's report under section 5A. If the latter course is to be resorted to, the Collector cannot make a report to Government under section 5A unless a notification under section 4(1) has first been published.

published. In that case after the Company has made an applica tion for land acquisition, and the Government is satisfied that the work is prima facie for staff quarters for the Company a notification under section 4(1) should be issued by Government.

Sd/- B.D.M.

Additional Secretary to Government.

U.R. to R.D. No. 12327 dated, 1st August 1951.

4-Cs.

M.V.V.
14/8.

No. 13581.

Legal Department,
Bombay Castle(Bombay No.1) 24th August 19

To

The Collector of Bombay and
the Bombay Suburban District,
Bombay.

Subject:- Recovery of Municipal Taxes from the amounts of compensation payable to the claimants in land acquisition cases.

Sir,

With reference to your endorsement No. L.A.Q./765, dated the 25th June 1951, forwarding the letter from the Special Land Acquisition Officer for Bombay and Bombay Suburban District, No. L.A.Q./764 of even date, on the subject noted above, I have the honour to observe as follows:-

Under section 212 of the Bombay Municipal Corporation Act, property taxes due under the Act, in respect of lands and buildings, are, subject to the prior payment of the land-revenue, if any, due to Government, a first charge on the land or building or upon the interest in the land or building of the person liable if the land or building is held immediately from the Government. As the Municipality has a first charge on the land or building for its property taxes, the Municipality would be a person interested within the meaning of that term in clause (b) of section 3 of the Land Acquisition Act and would be entitled to payment of the tax from the compensation. There would, therefore, be no objection to the Special Land Acquisition Officer entertaining the claim of the Municipality under section 11 and to awarding it a share of the compensation for the taxes due if he is satisfied that the claim of the municipality is valid.

Yours faithfully,

Sd/- B.D.Hirchandhani,

Additional Secretary to Government.

4-Co./M.V.V./14.8

R.I.No. 15776 dated 30-7-51.

Submitted.

2. Certain lands at Bedag were notified under sec. 4 of the Land Acquisition Act, 1894(1) for the Railway Approach Road by G.N. R.D.No. S.112 dated the 3rd May, 1948 and (2) for the construction of wells by G.N.R.D.No. WT/9912/45, dated 14-12-1948. When the lands at Bedag were notified they were in the the Chikodi Taluka of the Belgaum Dist. and the Prant Officer Chikodi was appointed under sec. 3(c) to perform the functions of the Collector under sec. 5-A of the Act. It appears the P.O. has completed his report under sec. 5-A in respect of (1) the Station Approach Road on 5th July 1948 and (2) the constructions of wells on 11-4-1949; and the lands have been demarcated, measured and mapped and the proceedings have reached the stage of the final notification under sec. 6. Thereafter due to the territorial changes effected under the Bombay Land Rev. Code the village was transferred to the Miraj taluka of the South Satara dis. After the transfer of the said village to the South Satara dist., the Collector of Belgaum in his report dated 21-9-49 requested Govt. to cancel the notification dated 3-5-1948 and to start fresh proceedings for acquisition under the belief that the P.O.Chikodi had ceased to have jurisdiction in the matter due to the territorial changes. It appears the said notification has thereafter been cancelled. The Collector of South Satara in his report dated 11th July 1951 has referred to R.L.A.'s opinion No.723, dated 12th Jan 51 and has stated that in view of this opinion the P.O. Chikodi would still have authority to proceed with the acquisition and that he may be directed to proceed with the matter and to file his award under sec. 12(1) in the Office .....

P.T.O.

of the Collector, South Satara. The R.D. however is of the view that the R.L.A's opinion has no application to this case as the declaration under sec.6 has not been made in this case and that it would be possible to appoint the P.O. in charge of the Sangli Taluka for all proceedings to be taken hereafter. The R.L.A. is requested to advise.

4-Os/M.V.V./14.8

Legal Department.

Land Acquisition Act, 1894. Sections 4 & 6.

Seems and returned.

The view taken by the Revenue Department is correct.

Sd/- B.D.M.

Additional Secretary to Government.

U.R. to R.D. No. 13999, dated the 31-8-1951.

A-Cs./M.V.V./14.8

Legal Department.

Land Acquisition Act, 1894. Section 3(e) Acquisition for a printing press.

In view of section 72-A of the Bombay Cooperative Societies Act, 1925, a Society registered under this Act would be a Company within the meaning of section 3(e) of the Land Acquisition Act 1894. Section 40 sub-section (1) of the latter Act contemplates the acquisition of land for companies if such land is needed for the purposes specified therein. To warrant an acquisition of land under section 40(1)(b), all that is necessary is that Government must be satisfied "that such acquisition is needed for the construction of some work and/that such work is likely to prove useful to the public." Both these conditions must be satisfied. As to the interpretation to be put on the expression "likely to prove useful to the public" attention is invited to R.L.A's opinion No. 1009, dated the 27th January 1949. As pointed out therein Government is the final arbiter to decide whether the work proposed to be constructed is "likely to prove useful to the public". It may be pointed out that there is nothing in the Administration of Evacuee Property Act, 1950, which would come in the way of thus acquiring the property vested in the Custodian under the provisions of that Act.

Sd/- B.D.M.

Additional Secretary to Government.

U.R. to R.D. No. 14600, dated the 14th September 1951.

4-Cs.
S.V.V.
14/8.

Legal Department.

Reference under sec. 18, L.A.Act, 1894.

Period of limitation and Collector's powers to decide the point of limitation.

The powers of the Collector under section 18 of the Land Acquisition Act, 1894, have now been explained by the High Court in G.J. Desai vs. Abdul Mazid Kadri, A.I.R. (1951) Bombay 156. It is held there that "the power of the Collector to make a reference is circumscribed by the conditions laid down in section 18 and one important condition is the condition to be found in the proviso. That proviso lays down the period within which the application has got to be made. Therefore if the application is made which is not within time the Collector would not have the power to make the reference. In order to determine the limits of his own power it is clear that the Collector would have to decide whether the application presented by the claimants is or is not within time and satisfies the conditions laid down in the proviso. Assuming that the Collector is wrong in the view that he takes as to the maintainability of the petition and refuses to make a reference, it would always be open to the claimants to come to court and get the court compel the Collector to make a reference if they satisfy the Court that their application was within time." In view of this decision it is clear that it is for the Collector to decide whether the application is within time and in the present case his decision appears to be prima facie correct.

Sd/- B.D.M.

Additional Secretary to Government.

~~xxxxx~~

U.R. to R.D. No. 14593, dated the 14th September 1951.

4-Cs.
M.V.V.
14/9.

Legal Department.

Since Government lands cannot be acquired under the Land Acquisition Act, the award passed by the Land Acquisition Officer in respect of such lands is invalid. There would therefore be no legal objection to the Land Acquisition Officer modifying the award omitting compensation in respect of Government lands.

Sd/- B.D.M.

Additional Secretary to Government.

U.R. to R.D. No. 15601, dated the 1st October 1951.

4-Cs.
M.V.V.
14/8.

Office of the R.L.A.

Land Acquisition Act, 1894.

Acquisition of land,

Sections 31, 16 and 17

Under section 31 of the Land Acquisition Act, 1894, after an award has been made, the Collector must tender compensation to the person interested. He cannot withhold the payment of compensation on the ground that he cannot get vacant possession. Under section 16 it is for the Collector to take possession of the land acquired. Government cannot, therefore, withhold or postpone the payment of compensation in this case. If the Collector is opposed or impeded in taking possession, he should have recourse to section 47 of the Act.

Sd/- J.R.Dhurandhar,
20/12.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 20332, dated the 20th December 1951.

4-Cs.
M.V.V.
14/8.

Office of the R.L.A.

Under the Land Acquisition Act, 1894, it is no doubt for Government to decide whether a purpose for which any land is to be acquired is a public purpose. A declaration made by Government under section 6 of the Act to that effect is to be conclusive. But such purpose will have to be of a definite character and cannot be vague or indefinite. The words "for other industrial schemes" suggested by Secretary, Development Department will make the declaration vague and indefinite and it is likely to be challenged.

Sd/- J.R.Dhurandhar,
27/12.

Remembrancer of Legal Affairs.

U.R. to R.U. No. 1082-Confl. Dated the 28th December 1951.

4-Cs.
M.V.V.
14/8.

Office of the R.L.A.

Land Acquisition Act.1894.

Santa Cruz Aerodrome.

Excess Land.

Attention is invited to R.L.A's opinion No.8330 dated 30th August 1948. For the reasons stated therein, if the lands are not required for the purpose of aerodrome, it would be proper to release them. If they are again required for any other purpose, they will have to be acquired again by fresh proceedings. The view taken in R.L.A's No. 11003 dated the 12th July 1951 and No.12499 dated the 4th August 1951 in regard to the Milk Colony case is not applicable. In that case the lands had vested in Government. It was , therefore, possible to hand over a part of them not required to the Bombay Municipal Corporation. In the present case, the preliminary notification under section 4 of the Land Acquisition Act has been issued and it is still to be followed by a declaration under section 6. In the meantime it is found that certain portion of the lands notified for acquisition is not so required for the purpose mentioned in the notification. In the present case it would be necessary to denotify the lands not required. The view taken by the Collector, Bombay Suburban District, in his memo dated 1st November 1951 is correct.

Sd/- J.R.Dhurandhar,
29/12.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 20719, dated the 29th December 1951.

4-Cs./M.V.V./14.8

Office of the R.L.A.

The first question raised for consideration is whether in view of the fact that though the lands had been acquired on the application of the urgency clause no deposit of the price of the land had been credited by the Society before possession of the lands had been handed over to it, the land acquisition proceedings under the Baroda law can be set aside. In para 3 of his note (p.7) the Deputy Secretary, Revenue Department, states that as the amount of compensation had not been deposited before the possession of the lands was handed over to the Society the land acquisition proceedings are defective. This view however does not find support in the provisions of the Baroda Land Acquisition Act. Section 43 of that Act provided for the entering into of an agreement with an institution providing inter alia for the payment to Government of the cost of the acquisition. That section did not provide that the amount should be deposited before possession of the lands was handed over. In that respect it corresponds to section 41 (1) of the Land Acquisition Act, 1894. Under section 21(1) of the Baroda Act in the case of an urgency, land could be taken possession of after 15 days of the date of notification and such land vested absolutely in Government free from incumbrances. The question of setting aside the land acquisition proceedings does not really arise. The Baroda Act was repealed by the Baroda State (Application of Laws) Order, issued under the Extra Provincial Jurisdiction Act, 1947. But whatever was done under the Act so repealed has been declared to be valid. It appears, therefore, that there would be no ground for setting aside the land acquisition proceedings.

2. The next question raised for consideration is

 whether.....

whether S.Nos.364 to 369 belonging to the Society can be acquired for allotting to the agriculturists for agricultural purposes. It is presumed that the lands had not been acquired by the Baroda Government for the Society. Under section 6(1) of the Land Acquisition Act, 1894, it is competent for the State Government to declare that a particular land is needed for a public purpose. The definition of the expression "public purpose" in the Act is an inclusive one. Any purpose intended to benefit the public generally, or a section of the public as opposed to the particular interest of individuals, is a public purpose. It is true that it is more or less in the discretion of Government to determine what is a public purpose; and therefore it may be possible for Government to declare that the lands are required for the purpose of being alletted to agriculturists for agricultural purposes. But this view of Government is likely to be challenged in the circumstances of this particular case. It is admitted that the lands bearing S.Nos. 370 to 376 were acquired by the ~~Erstwhile~~ Baroda Government for the Audichya Nagar Co-operative Housing Society as the lands in the village on which the members had constructed their houses were in the danger of being submerged by the river Tapti. The S.Nos. in question were therefore acquired so as to enable the persons concerned to shift their abodes. The lands belonging to the Society and now proposed to be acquired are adjacent to these lands; and are thus suitable for the development of the village site. Under the Land Acquisition Act, 1894, the State Government has been specially empowered to assign lands for village sites in an emergency such as the destruction of a village by the encroachment of a river. (see Om Prakasha's Land Acquisition Act, p.54). Under these circumstances,

any step .....

any step taken to re-acquire the lands acquired for or purchased by the Society is likely to be challenged in a court of law and is not free from doubt.

3. If however the lands purchased by the Society by private agreement are still agricultural lands, they cannot be used for a non-agricultural purpose without the permission of the Collector under section 65 of the Bombay Land Revenue Code. If, however, it is considered that it is not in the interest of the public to permit such appropriation for a non-agriculatural purpose, it will be for the consideration of Revenue Department whether the Collector should not be instructed to refuse the permission. The object which the R,D. has in view may be achieved by the refusal to convert the land from an agricultural to a non-agricultural purpose. This device cannot however apply to x lands which are acquired under the Baroda Act for a building purpose.

Sd/- J.R.Dhurandhar,
29/12.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 20730, dated the 29th December 1951.

4-Os./M.V.V.
14/8/56.